

STATE OF MICHIGAN
COURT OF APPEALS

LUTHER KOGER, III, and THERESA KOGER,

Plaintiffs-Appellants,

v

GEORGE CUTSHAW,

Defendant-Appellee.

UNPUBLISHED

August 6, 1999

No. 207385

Oakland Circuit Court

LC No. 96-515703 NI

Before: White, P.J., and Markey and Wilder, JJ.

MEMORANDUM.

Plaintiffs appeal by right from the trial court's order granting defendant's motion for summary disposition on the issue of proximate cause. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Ordinarily, the determination of proximate cause is left to the trier of fact, but if reasonable minds could not differ regarding the issue, the trial court should decide the issue as a matter of law. *Babula v Robertson*, 212 Mich App 45, 54; 536 NW2d 834 (1995). This is true not only of matters of legal causation but of the element of cause in fact as well. See, e.g., *Reeves v Kmart Corp*, 229 Mich App 466, 480-481; 582 NW2d 841 (1998).

Here, no evidence was offered or presented upon which reasonable minds could rely to conclude that Mr. Koger's left foot problems were proximately caused by the automobile accident. In support of the motion for summary disposition, defendant presented expert medical opinion evidence indicating that the foot condition was unrelated to the collision, as well as an acknowledgment from Mr. Koger's treating physician that she has no basis for concluding otherwise. Defendant's evidence also indicated that Mr. Koger did not seek treatment for his foot problem until well after the accident. In contrast, the only facts that plaintiffs offered in support of their theory of causation was Mr. Koger's claim that he had no foot pain or problems before the collision but has had pain and problems since the collision. The trial court did not err in concluding that this assertion was insufficient to create a genuine issue of material fact whether the accident caused Mr. Koger's diabetic ulcer on his left foot. A genuine issue regarding proximate cause cannot be based upon mere speculation or conjecture that

some causal connection is possible. See *Skinner v Square D Co*, 445 Mich 153, 164-165, 174; 516 NW2d 475 (1994).

We are not persuaded that this case should be remanded for an expansion of the evidentiary record or for clarification of the trial court's reasoning.

Affirmed.

/s/ Helene N. White

/s/ Jane E. Markey

/s/ Kurtis T. Wilder